

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
AUG 13 2009

CLERK

ROSCOE PRIMEAUX, * CIV. 84-4086

* * * * *

-VS- *** OPINION AND ORDER**

* * * * *

HERMAN SOLEM, Warden, South Dakota *
State Penitentiary; and *
MARK MEIERHENRY, Attorney General; *

Respondents.

Despite this case having been dismissed nearly 25 years ago, Petitioner Roscoe Primeaux, an inmate at the South Dakota State Penitentiary, filed a Motion to Set Aside Judgment Under Rule 60(b) on June 29, 2009. The court denied the motion on July 1, 2009, and also denied a certificate of appealability. Petitioner appeals and requests to proceed in forma pauperis.

PROCEDURAL HISTORY

Petitioner was found guilty by a jury of second degree murder and two counts of aggravated assault, and on December 18, 1981, he was sentenced to life in prison with concurrent terms of four years and six years on the aggravated assault counts. Petitioner's conviction was affirmed on appeal by the South Dakota Supreme Court. See State v. Primeaux, 328 N.W.2d 256 (S.D. 1982). Petitioner has filed at least two state habeas petitions.

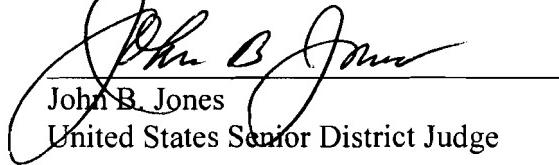
Petitioner has also filed five other federal petitions: CIV. 88-4098, which was dismissed without prejudice on June 27, 1988; CIV. 94-4022, which was dismissed on its merits and with prejudice June 14, 1995; CIV. 96-4296, which was dismissed without prejudice on January 17, 2001, CIV. 04-4117, which was dismissed on December 20, 2004 and, most recently, CIV. 08-4082, which was dismissed on July 7, 2008.

ORDER

Pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A) and the provisions of the Prisoner Litigation Reform Act, 28 U.S.C. § 1915, et seq, it is determined Plaintiff's appeal is frivolous and without merit and his motion to proceed in forma pauperis on appeal (Doc. 19) is DENIED.

Dated this 13² day of August, 2009.

BY THE COURT:


John B. Jones
United States Senior District Judge